

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**GREGORY ADKINS,  
Claimant Below, Petitioner**

**v.) No. 24-ICA-304** (JCN: 2022017027)

**SWVA, INC.,  
Employer Below, Respondent**

**FILED  
February 28, 2025**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK  
INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Gregory Adkins appeals the July 1, 2024, order of the Workers' Compensation Board of Review ("Board"). Respondent SWVA, Inc. ("SWVA") filed a response.<sup>1</sup> Mr. Adkins did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which granted Mr. Adkins a 0% permanent partial disability ("PPD") award.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

On February 9, 2022, while employed by SWVA, Mr. Adkins injured his left elbow when he was lifting a box. Mr. Adkins completed an Employees' and Physicians' Report of Occupational Injury or Disease dated February 22, 2022. The physician's section of the application indicates that Mr. Adkins was diagnosed with a left elbow injury.

On June 14, 2022, Mr. Adkins underwent a left distal biceps tendon repair for the diagnosis of left distal biceps tendon rupture performed by Luis Bolano, M.D.<sup>2</sup> On October 24, 2022, Dr. Bolano reported that Mr. Adkins participated in physical therapy twice a week but was still having some pain when twisting his arm. Dr. Bolano noted that Mr.

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<sup>1</sup> Mr. Adkins is represented by Edwin H. Pancake, Esq. SWVA is represented by James W. Heslep, Esq., and Steven K. Wellman, Esq.

<sup>2</sup> It is assumed that left distal biceps tendon rupture is the compensable condition in the instant claim, as no compensability order or other indication of the compensable condition(s) is included in the lower record.

Adkins's left elbow showed no signs of swelling and had full active range of motion. He recommended that Mr. Adkins continue with physical therapy.

Prasadarao Mukkamala, M.D., performed an independent medical evaluation ("IME") on March 6, 2023. Mr. Adkins complained of soreness at his left elbow depending upon the level of his activity. Mr. Adkins reported that he had resumed full duty work. Dr. Mukkamala found left elbow flexion was 140°, extension was full up to neutral, pronation 80°, and supination 80°. Dr. Mukkamala described Mr. Adkins' range of motion as normal. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed., 1993), ("*Guides*"), Dr. Mukkamala opined that Mr. Adkins did not have any permanent whole person impairment ("WPI"). The claim administrator issued an order dated March 16, 2023, granting Mr. Adkins a 0% PPD award based upon the report of Dr. Mukkamala. Mr. Adkins protested this order.

On September 18, 2023, Dr. Bruce Guberman performed an IME. Mr. Adkins reported left elbow pain on a daily basis with stiffness. Dr. Guberman found left elbow flexion was 130°, extension was 0°, supination 80°, and pronation 50°. Dr. Guberman's neurological examination indicated weakness of Mr. Adkins' left hand being graded at 4.5/5. Dr. Guberman indicated that pursuant to Figure 32 on page 40 of the *Guides*, Mr. Adkins had 1% upper extremity impairment for flexion and extension abnormalities, and from Figure 35 on page 41, he had 2% upper extremity impairment for range of motion abnormalities in supination. Dr. Guberman stated that the 3% upper extremity impairment equals 2% WPI related to the compensable injury.

On January 23, 2023, the claim administrator issued an order granting Mr. Adkins a 0% PPD award based on Dr. Mukkamala's report. Mr. Adkins protested this order. On July 1, 2024, the Board issued an order affirming the claim administrator's order granting Mr. Adkins a 0% PPD award. The Board found that Mr. Adkins failed to establish that he had more than 0% WPI related to the compensable injury. Mr. Adkins now appeals the Board's order.

Our standard of review is set forth in West Virginia Code § 23-5-12a(b) (2022), in part, as follows:

The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

- (1) In violation of statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the Board of Review;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm’n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

Mr. Adkins argues that the Board failed to note that medical records from Dr. Bolano did not include any range of motion measurements, only a note that he had full active range of motion. Thus, Mr. Adkins argues that the Board gave undue weight to the opinion of Dr. Mukkamala based on Dr. Bolano’s opinion. We disagree.

Here, the Board determined that based on the medical records, Mr. Adkins had 0% WPI related to the compensable injury. The Board noted that Drs. Mukkamala and Guberman both provided impairment ratings for Mr. Adkins’ left elbow injury, and the reports differ in their ratings for range of motion. The Board further noted that Dr. Mukkamala found no range of motion deficits for the left elbow, while Dr. Guberman found range of motion abnormalities in flexion, extension, and supination. The Board found that Dr. Bolano’s treatment note dated October 24, 2022, which found no range of motion deficits, supported the finding of Dr. Mukkamala; thus, the Board found Dr. Mukkamala’s report to be reliable. The Board further found that Dr. Guberman’s report is an outlier and is not persuasive. The Board affirmed the claim administrator’s order.

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Adkins failed to establish that he had more than 0% WPI related to the compensable injury based on the report of Dr. Mukkamala. As the Supreme Court of Appeals of West Virginia has set forth, “[t]he ‘clearly wrong’ and the ‘arbitrary and capricious’ standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis.” Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the Board was clearly wrong in affirming the claim administrator’s order granting Mr. Adkins a 0% PPD award.

Accordingly, we affirm the Board’s July 1, 2024, order.

Affirmed.

**ISSUED:** February 28, 2025

**CONCURRED IN BY:**

Chief Judge Charles O. Lorensen

Judge Daniel W. Greear

Judge S. Ryan White